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February 28, 1997

William F. Caton
Acting Secretary
Office of the Secretary
Federal Communications Commission
1919 M Street, N.W.
Washington, D.C. 20554

RECEIVED

FEB 28 1997

Federal Communications Commission
Office of Secretary

Re: MM Docket No. 95-176/FCC 97-4 - Closed Captioning NPRM

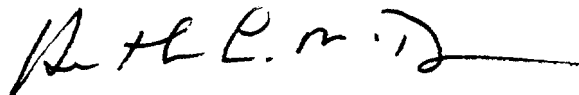
Dear Mr. Caton:

Enclosed please find an original and eleven (11) copies of the Comments of NIMA International ("NIMA") in the above-referenced proceeding. Also enclosed is a 3½ inch diskette containing a read-only version of NIMA's comments.

We are also providing one additional copy of the Comments, which we ask that you kindly date-stamp and return to the messenger. We appreciate your assistance.

Please contact me if you have any questions.

Sincerely,


Heather L. McDowell

Enclosures

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Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

RECEIVED

FEB 28 1997

*Federal Communications Commission
Office of Secretary*

In the Matter of)	
)	
Closed Captioning and Video Description)	
of Video Programming)	
)	MM Docket No. 95-176
Implementation of Section 305 of the)	
Telecommunications Act of 1996)	
)	
Video Programming Accessibility)	

COMMENTS OF NIMA INTERNATIONAL

NIMA International ("NIMA") hereby submits its comments in the above-captioned proceeding to support exemptions from mandatory closed captioning for both long- and short-form advertising, as well as for television shopping programs. Since these types of programming already provide material information about the advertised items or services in graphic and textual formats, captioning them would simply be redundant, would require all program owners or producers to incur extra costs to provide superfluous descriptions that would offer no corresponding benefit for hearing impaired viewers, and the cost of captioning would ultimately be borne by consumers.

I. BACKGROUND

NIMA is the primary trade organization representing companies and individuals involved in direct response television advertising, one of the fastest-growing segments of the direct marketing industry. NIMA members include the leading infomercial and short-

form direct response marketers and producers, television shopping networks, advertising agencies, media buyers, and cable television networks and broadcast stations.

The Commission's Notice of Proposed Rulemaking ("NPRM")^{1/} in this proceeding sought comment on several proposals concerning exemptions from the general requirement, imposed by the Telecommunications Act of 1996, that all new programming be closed captioned for the hearing impaired. In particular, the Commission requested specific comment on whether infomercials, "spot" ads, and television shopping should be exempt from the new closed captioning rules. The NPRM implies an intention to exempt advertising and possibly infomercials from mandatory closed captioning. For the reasons set forth in these comments, NIMA believes that all advertising should be exempted.

NIMA members are committed to offering consumers an opportunity to make informed choices about the diverse array of products and services available through direct response television. Our members also support the broad goal of enhancing hearing impaired individuals' access to television programming, and to the opportunities to purchase goods offered through infomercials and television shopping services. Moreover, because they are involved in highly interactive promotions, NIMA's members are proudly among those that are most sensitive and responsive to consumers' fast-changing needs. Nevertheless, all television advertising media, including television shopping services, are driven by visual images and descriptions of the items or services

^{1/} In the Matter of Closed Captioning and Video Description of Video Programming, ___ FCC Rcd. ___, MM Docket No. 95-176, FCC 96-4 (Adopted January 9, 1997; Released January 17, 1997).

offered. In these circumstances, the marginal benefit, to the hearing impaired resulting from captioning of infomercials and television shopping service, is outweighed by the cost associated with this process.

II. LONG- AND SHORT-FORM ADVERTISING SHOULD BE EXEMPT FROM MANDATORY CLOSED CAPTIONING

Direct response television advertising is, above all, a visual means for advertisers to communicate with potential customers. The aural component of video advertisements complements or reinforces what the viewer sees, but the core promotional message is presented visually. If it were otherwise, electronic retailers could rely solely on telemarketing or radio ads. Furthermore, in the direct response industry, it is not enough to present an "appealing" image of product in the hope that consumers will select it when shopping in a retail establishment. To succeed, these programs, which range in duration from two minutes to one hour, must present a complete visual picture of the product or service being offered in order to persuade consumers to make an immediate purchase, or at least make interested contact with the seller, without physically handling the product in a store or reading a lengthy solicitation sent through the mail. Direct response advertisers thus expend considerable effort and resources to make their ads not merely interesting, but also visually informative.

Infomercials and spot ads convey product information in several different ways. For example, an infomercial program host and participants will not only display a product, but also demonstrate its benefits and how it should be used, including information as to cleaning or storage features, or any necessary assembly. Each

component of an offer is displayed on screen when the offer includes more than one, so that consumers can see additional items or premiums such as instructional video or cassette tapes. Product performance or results may also be presented visually through on-camera use, “before” and “after” pictures, and occasionally, demonstrations of competing products. In addition, these images are frequently accompanied by textual summaries or “bullet points” summarizing a product’s features (e.g., workmanship, construction, contents or ingredients, etc.), other users’ experiences with the product or service, or graphics such as charts, tables, or diagrams.

Important disclosures concerning any limitations that apply to the advertised item or service are also presented visually, most often by printed words superimposed at the bottom of the television screen. For example, an advertisement for an exercise product may include several textual warnings that consumers should consult a physician before starting any exercise regimen. Similarly, infomercials typically disclose their commercial nature (i.e., that the program is a paid advertisement) in text form at the beginning and end of the program, as well as before each ordering opportunity.²

Nor is closed captioning necessary for hearing impaired consumers to place orders. Direct response advertisements invariably display an “ordering screen” that plainly discloses the essential information that viewers need to know to place an order. In long-form infomercials, this screen generally appears three or four times during the program. Ordering screens for direct response ads certainly include information concerning price, where to call or write to order, and acceptable payment methods. Also,

² NIMA’s self-regulatory Marketing Guidelines call for these disclosures.

depending on the terms of the offer, the ordering screen will also inform consumers about the availability of credit, refund policies, product or service guarantees, shipping dates and charges, return policies, and limitations on product availability.

In addition, the vast majority of direct response advertisements offer consumers a toll-free telephone number to call to order, or simply to obtain more information. These lines are staffed by live operators, who are available to answer questions or provide information that viewers may have forgotten or missed. Some direct response advertisers have their own equipment for handling telephone calls from hearing impaired customers; at a minimum, the Commission's Telephone Relay Service ("TRS") requirements ensure that this added opportunity to obtain product information is equally available to people with impaired hearing.

These various mechanisms for conveying information afford all viewers ample opportunity to learn about the product or service offered based on what they see. Thus, in direct response television advertising, the visual elements -- both pictorial and text -- are more than adequate to communicate the essential and material terms of the offer.

On the other hand, marketers would face significant added costs and production burdens if they were required to closed caption advertisements. Mandatory closed captioning may render the costs of even a single television ad beyond the reach of many smaller companies. Moreover, even for large companies, the cost of closed captioning must be taken into account and, more importantly, the way in which that cost affects direct response television advertising must be considered. In its report to Congress, the Commission has provided estimates of the incremental costs of mandatory closed captioning on a per hour basis. In the case of traditional television programming, this

may be a perfectly acceptable measure because the total cost of producing a traditional program only indirectly affects the prices that consumers pay for goods and services advertised during that programming. In the case of direct response television, however, there is a direct relationship between the price paid by the consumer for the product and any costs added to the production of the program that offers that product or service. This problem becomes particularly acute in the case of so-called "low-ticket" items, such as books, video and audio materials, cosmetics, household appliances, and the like. In such cases, an increase in the cost of producing the infomercial or direct response advertising by even as little as one or two percent in order to meet a mandatory closed captioning requirement may well make low-cost items unmarketable and will, in any event, alter the competitive balance between those advertising vehicles -- including radio -- that are not subject to closed captioning and those which are.

NIMA does not contend that cost considerations alone would justify exempting infomercials from a closed captioning requirement. However, given the fact that all of the essential information that a consumer needs to take advantage of the opportunities to purchase goods and services offered through direct response television advertising is already presented in the advertisement itself and in a form usable by the hearing impaired, the balance of benefits to be derived from applying mandatory closed captioning requirements to this type of program is plainly outweighed by the cost and competitive consequences that would ensue from the requirement. The Commission's inclination not to apply mandatory closed captioning to direct response television advertisements is sound and should be reflected in the final rule.

III. TELEVISION SHOPPING PROGRAMS SHOULD BE EXEMPT AS ANOTHER FORM OF ADVERTISING

The NPRM implied that different considerations come into play in assessing whether mandatory closed captioning requirements should be imposed on television shopping services. NIMA does not agree. Television shopping programmers make effective visual presentations of product information like all other direct response television advertisers, and their sales revenues similarly depend on ensuring that prospective customers do have all the material information that they need to decide whether or not to make a purchase. The Commission's proposal not to exempt this category of programming from its closed captioning rules seemingly overlooks the primary purpose of television shopping services, and the corresponding effect that has on how they present items for sale.

Television shopping programs offer viewers a viable alternative to going to a store to shop; in order to gain consumer trust and confidence, television shopping services must provide comprehensive and accurate product information. As in the case of other advertising, they focus on displaying the products so that consumers can see them. For instance, models often wear clothing or jewelry, and program hosts show and demonstrate various household items or gifts. Close-ups, or showing the host holding up a product, give viewers a way to judge size and other characteristics that may be more meaningful to some viewers than numeric descriptions such as "Size 6" or "20 inches by 48 inches." At the same time, ordering instructions and additional product descriptions are provided in text form on the bottom or side of the television screen (or both).

Certainly, not “all” descriptive information,³ or every single statement made by shopping program hosts is displayed textually. For instance, conversational statements, (e.g., “this is one of my favorite items,” “this is a very pretty item,” etc.) are not usually reproduced or summarized in text. These statements may enhance program entertainment, but they do not convey key product information that is not already depicted visually. In addition, since television shopping programs are generally broadcast live, and continuously, the “conversational” aspect of the show seems to be precisely the kind of audio information a real-time captioning service would be constrained to omit from time to time in order to keep pace with the program.

Furthermore, as is the case with other types of advertising, captions would actually detract from the descriptions viewers get through other means by obscuring either the textual disclosures at the borders of the television screen, or by covering up the pictures of the products themselves. A blurred “text-on-text” display of captions over chyron disclosures would surely be illegible, and placing captions over the product images would deprive viewers of a clear view of what they would be buying.

In these circumstances, the distinction that the Commission proposed to draw between television shopping services and other types of advertising is difficult to comprehend. Like other forms of advertising, television shopping services supply information about product benefits and features, as well as the price and other terms of each offer, through alternative visual techniques. Rather, the position taken in the NPRM seems to rest on the proposition that, because television shopping services typically

³ NPRM at ¶ 78.

operate 18-24 hours per day, they are better able to absorb the incremental cost of closed captioning. This, however, misconceives the economics of television shopping programming. As in the case of all direct response advertising, the additional cost of closed captioning will reflect itself in the price of the product and will, therefore, have a particularly adverse effect on the price at which a low-ticket item can economically be offered on television shopping services. In short, the same balance of marginal benefits, if any, and a substantial detriment to all consumers exists in any attempt to apply a mandatory closed captioning requirement to television shopping services, as the Commission as found in the case of traditional advertising and other forms of direct response advertising.

Respectfully submitted,

NIMA International

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